



Lesotho: Authorities must withdraw proposed Internet Broadcasting Rules that would curtail freedom of expression and association

Maseru and Johannesburg

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On the 29th October 2020 the Lesotho Communications Authority (LCA) announced its intention to promulgate the **Lesotho Communications Authority (Internet Broadcasting) Rules, 2020** in terms of **section 5(1) (c) and section 38(2) of the Communications Act No. 4 of 2012** and placed a public consultation notice on its website. The purpose of the proposed Rules is to “make provision for regulation of internet broadcasting distributed over the internet”, and if enacted, they shall apply to “internet broadcasting initiated from, targeted to or received in Lesotho accessible to a large number of internet users”.

The current provisions of the **Lesotho Telecommunications Authority (Broadcasting) Rules 2004** give power to the relevant Authority to impose a financial penalty (which amount shall be determined by the Authority), or direct the licensee to broadcast a correction or an apology for any conduct deemed to be in contrary with the Rules. Such overbroad powers could be abused to disproportionately punish those who may be deemed to have failed to comply with the rules. As it stands, an individual may be deemed to have violated the Rules if they refuse to provide free services in relation to “issues of utmost importance to the nation as a whole”.

It is against this background that the Southern Africa Human Rights Defenders Network (SAHRDN), the Transformation Resource Centre (TRC) and the International Commission of Jurists (ICJ) express their grave concern over the proposed Internet Broadcasting Rules that have been published by the government of Lesotho, through the Lesotho Communications Authority (LCA) and call for its immediate withdrawal. If adopted, the laws would pose serious obstacles to the enjoyment of freedom of expression and freedom of association.

If enacted into law, the proposed regulations would classify persons with more than 100 followers on social media platforms, such as Facebook and Twitter, as internet broadcasters, thereby triggering the requirement to first register with the authorities, before operating their social media accounts.

If passed into law, the proposed regulations would also classify as internet broadcasts any internet posts that are accessible to at least 100 users in Lesotho. Anyone who creates such internet posts would be required to register with the LCA within six months. Internet posts are defined as any message, whether text, picture, video or audio that is placed or uploaded on any internet platform to be accessed by the public, be it on social media or website.

These requirements constitute onerous and arbitrary restrictions on the exercise of freedom of expression and freedom of association. In order to register with authorities, persons would have to provide identity documents, or documents of incorporation, proof of residence and show "ability to comply with Lesotho Telecommunications Authority (Broadcasting) Rules of 2004".

Certain provisions of the proposed Rules are vague and overbroad and therefore, are open to abuse and could result in violations of human rights by authorities in Lesotho. For example, the proposed Rules provide that, in the event that an effected individual or group whom the fails to comply with any of the provisions they would "face heavy consequences according to what the Authority deems fit, as provided in any of the applicable Rules."

If the proposed regulations are passed into law, they will certainly present a range of challenges to human rights defenders (HRDs) who rely on social media to expose human rights abuses and encourage public debate on matters of public concern, including the state of democracy in Lesotho.

"What we are currently witnessing in Lesotho is a trend that is used by other authorities in Southern Africa to close down civic space through attacking a powerful resource like social media, and this especially comes after the recent resolution that was adopted by the SADC Heads of States to 'take pre-emptive measures against external interference, impact of fake news and abuse of social media...'", said Simphiwe Sidu, Regional Legal Advisor of the SAHRDN .

"The proposed Rules are a threat to the freedom of expression, freedom of association and undermines many other related human rights in Lesotho. If enacted into law, these rules would constitute a violation of Lesotho's Constitution and its international obligations especially on freedom of expression and association" said ICJ Africa Director, Kaajal Ramjathan-Keogh.

The Right to freedom of expression and the free flow of information is recognised in article 14(1) of the Constitution of Lesotho, while freedom of association is guaranteed in article 16(1). These rights are also recognised in several international and regional instruments which include: article 19(2) and article 22 of the International Covenant on Civil and Political Rights (1966); article 9(2) and article 10(1)of the African Charter on Human and People's Rights; and the SADC Declaration on the Role of Information and Communication in Building the Southern African Development Community (1995). Lesotho is a State Party to these treaties and therefore, has an international obligation to respect the freedoms of expression and association.

The former UN Special Rapporteur on Freedom of Opinion and Expression, Mr Frank La Rue has emphasised the need for clear and unambiguous laws as a basis for any censorship/blocking/filtering, because broad, ambiguous laws are a basis for arbitrariness. In his 2011 report, he noted that "Any legislation restricting the right to freedom of expression must be applied by a body which is independent of any political, commercial, or other unwarranted influences, in a manner that is neither arbitrary nor discriminatory, and with adequate safeguards against abuse, including the possibility of challenge and remedy against its abusive application."

The SAHRDN, ICJ and TRC urge the authorities in Lesotho to withdraw the proposed Regulations.

For further information please contact: Simphiwe Sidu, the SAHRDN Regional Legal Advisor
ssidu@southernafricadefenders.africa or Adv. Lepeli Moeketsi the TRC Human Rights Programme
Manager lepeli.moeketsi@trc.org.ls or Kaajal on kaajal.keogh@icj.org, mobile +27845148039